

CALIFORNIA COASTAL COMMISSION

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F 6a

Prepared June 7, 2007 (for June 15, 2007, hearing)

TO: Coastal Commissioners and Interested Persons

FROM: Alison Dettmer, Deputy Director, Energy, Ocean Resources and Federal Consistency Division
Mark Delaplaine, Manager, Energy, Ocean Resources and Federal Consistency Division
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Subject: STAFF REPORT ADDENDUM for Item F 6a

Consistency Certification CC-008-07 (North County Transit District, San Diego County; construction of 1.2-mile-long railroad passing track extension and railroad bridges over Loma Alta Creek in the City of Oceanside)

This staff memo provides additional proposed findings that support the staff recommendation of concurrence with North County Transit District's consistency certification CC-008-07 for construction of the Oceanside Passing Track Extension project in northern San Diego County. In this memo the staff proposes that the last paragraph in Section III.D (Air Quality and Energy Consumption) on page 24 of the staff report be replaced with the following paragraph:

NCTD states that the proposed project's air quality benefits include reduced idling time by automobiles on highways and train locomotives in the LOSSAN corridor and will lead to reduced emissions of air pollutants. In addition, the anticipated operational efficiency improvements arising from construction of the passing track extension are expected to increase ridership on existing passenger trains in the corridor and to correspondingly reduce automobile trips and vehicle miles traveled in the corridor. These project benefits are also consistent with recent Commission actions (e.g., CC-079-06, BHP Billiton LNG International, Inc., Ventura and Los Angeles Counties) to protect coastal resources that would be directly affected by global climate change resulting from increases in greenhouse gas emissions. Potential adverse effects on coastal resources associated with global

climate change include sea level rise, increased coastal flooding and erosion, inundation of developed areas and public access and recreation areas, alterations to existing sensitive habitat areas, ocean warming, changes in marine species diversity, distribution, and productivity, and increased ocean acidification. Numerous Coastal Act policies provide a basis for Commission action to reduce greenhouse gases and to protect coastal resources at risk from the adverse effects of global warming, including the air quality and energy minimization policies (Section 30253). The Commission finds that the proposed passing track project, and the resulting improvements to public transportation in the LOSSAN corridor, will help to reduce energy consumption, reduce greenhouse gas emissions, and improve air quality, and is therefore consistent with the energy minimization policy of the CCMP (Coastal Act Section 30253(4)).

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STAFF REPORT AND RECOMMENDATION

ON CONSISTENCY CERTIFICATION

Consistency Certification No.	CC-008-07
Staff	LJS-SF
File Date:	2/8/2007
3 Months:	5/8/2007
6 Months:	8/8/2007
Commission Meeting:	6/15/2007

APPLICANT:**North County Transit District****PROJECT
LOCATION:**

Milepost 227.2 to Milepost 228.4 of the Los Angeles – San Diego Railroad Corridor in the City of Oceanside, San Diego County (Exhibits 1 and 2).

**PROJECT
DESCRIPTION:**

Construction of a 1.2-mile-long extension of railroad passing track, and construction of a new railroad bridge and replacement of an existing railroad bridge over Loma Alta Creek.

**SUBSTANTIVE
FILE DOCUMENTS:**

See Page 27

EXECUTIVE SUMMARY

The North County Transit District (NCTD) has submitted a consistency certification for constructing a 1.2-mile-long extension of the Oceanside passing track between Mile Post (MP)

227.2 and MP 228.4 of the Los Angeles – San Diego (LOSSAN) railroad corridor on NCTD land in the City of Oceanside (San Diego County). The purpose of the project is to provide operational flexibility in order to increase service reliability and enhance on-time performance, and to help resolve current operational delays and enhance the capacity and utility of the LOSSAN corridor. The project consists of removing the existing timber trestle railroad bridge over Loma Alta Creek and constructing two new pre-cast concrete bridges, one for the passing track extension and one for the existing main line. In order to ensure continuous train traffic, the passing track bridge will be constructed prior to removal and replacement of the existing timber bridge. The project also includes modification of at-grade track crossings, installation of a new signal control point, new track cross-overs, a new turnout, and removal of an existing turnout. NCTD expects that the construction period will last approximately 18 months and is currently scheduled to occur between the summer of 2007 and December 2008. The Commission has previously concurred with similar NCTD double-tracking projects to the north on Marine Corps Base Camp Pendleton in the San Onofre area (CC-086-03), the O'Neil-Flores area (CC-004-05), and at the Santa Margarita River (CC-052-05).

Construction of the proposed project would affect tidal waters and brackish/freshwater wetlands. NCTD's wetland delineation for the project considered both U.S. Army Corps of Engineers and the more stringent Coastal Act wetland definitions, and concluded that permanent wetland losses from concrete bridge support piers and the fill embankment slope along the west side of a section of the passing track extension north of Loma Alta Creek would total 4,442 sq.ft. Temporary construction-related impacts to open water and wetland habitat would total 1,840 sq.ft. The Commission has considered previous NCTD double-track projects (CC-086-03 and CC-052-05) which included wetland fill to qualify as "incidental public service purposes," and thus an allowable use under Section 30233(a)(5) of the Coastal Act. However, the Commission found more recently in CC-004-05 that NCTD's O'Neil-Flores double track project was not an allowable use due to the increase in track capacity likely to occur as a result of that project. Given that the proposed project will add an additional 1.2 miles of double-tracking in the corridor, the proposed Oceanside passing track extension (the fourth double-track project in the San Onofre-Oceanside corridor reviewed by the Commission) will also, cumulatively, serve to increase the capacity of the LOSSAN corridor. If a transportation project increases capacity, it does not qualify as an allowable use under Section 30233(a) as an incidental public service, and none of the other seven allowable uses in Section 30233 apply. The proposed project is not an allowable use under Section 30233(a) and thus the only way the Commission could find this project consistent with the Coastal Act, as it did for the O'Neil-Flores segment (CC-004-05), would be through the "conflict resolution" provision of Section 30007.5.

The proposed project is located entirely within the NCTD right-of-way, which provides adequate room for the track extension. Except for wetlands at the Loma Alta Creek crossing, the proposed project would not pass through or near environmentally sensitive habitat. Alternative passing track design layouts at the Oceanside project site (e.g., constructing an alternative main line route, placing the passing track on the east side of the main line) are not feasible due to prohibitive costs, engineering constraints, and environmental impacts, and the no-project alternative would not meet the project objective. The project is the least environmentally damaging alternative and is consistent with the wetland fill alternatives test of the CCMP

(Coastal Act Section 30233(a)). The consistency certification includes a wetland restoration plan to restore 0.3 acres of brackish/freshwater marsh in areas adjacent to Loma Alta Creek as mitigation for the permanent loss of 0.1 acres of wetlands due to construction of bridge piers in the creek and a fill embankment slope in wetland habitat north of the creek. The plan includes a description of existing site conditions, restoration methodology, performance criteria, monitoring and maintenance provisions, remediation measures, and annual reporting requirements. The project is consistent with the wetland mitigation requirements of the CCMP (Coastal Act Section 30233(a)).

The project includes appropriate measures to protect water quality, including implementation of a storm water pollution prevention plan, best management practices during construction, and post-construction site restoration. The project is designed in part to reduce automobile miles traveled and, consequently, pollutants from highway runoff, thereby benefiting water quality. The project is consistent with the water quality policies of the CCMP (Coastal Act Sections 30231 and 30232). The project will not adversely affect existing public access or recreation, but would, individually and cumulatively, provide public access and recreation benefits by reducing highway traffic congestion and improving public transit services within the coastal zone. The project is consistent with the public access and recreation policies of the CCMP (Coastal Act Sections 30210-12 and 30252). The project would also help to reduce automobile vehicle miles traveled and energy consumption and therefore is consistent with the air quality policy of the CCMP (Coastal Act Section 30253(4)). The project will not adversely affect public views to or along the shoreline or scenic coastal areas and is consistent with the public view policy of the CCMP (Coastal Act Section 30251). The project will not adversely affect cultural resources known to exist in the project area, includes provisions to stop work should resources be discovered during construction, and is therefore consistent with the cultural resource policy of the CCMP (Coastal Act Section 30244).

The project creates a conflict between the access/energy conservation/air and water quality policies of the CCMP on the one hand (Coastal Act Sections 30210, 30252, 30231, and 30253(4)) and the allowable use test of the wetland policy (Coastal Act Section 30233(a)) on the other. Although impacts have been avoided and minimized where feasible, and residual impacts would be mitigated, the project is not an allowable use under Section 30233(a) of the Coastal Act. If the Commission were to object to the proposed project based on wetland policy requirements, the result would frustrate public access and lead to conditions that are inconsistent with the access policies (Section 30210). Such an objection would also result in adverse effects to coastal waters and the air basin and be inconsistent with the achievement of water quality, air quality, energy conservation, and reductions in vehicle miles traveled goals expressed in Sections 30231, 30253(4), and 30252. In resolving the Coastal Act conflict raised, the Commission finds that the impacts on coastal resources from not constructing the project would be more significant and adverse than the project's wetland habitat impacts, which will be mitigated. The Commission therefore concludes that, under Section 30007.5, concurrence with this consistency certification is consistent with the Coastal Act because it is, on balance, most protective of significant coastal resources.

STAFF SUMMARY AND RECOMMENDATION:**I. STAFF SUMMARY.**

A. Project Description. The North County Transit District (NCTD) proposes to upgrade its existing railroad track system in northern San Diego County by constructing a 1.2-mile-long passing track extension, located 20 feet west of the existing main line track between Mile Post (MP) 227.2 and MP 228.4 in the City of Oceanside (**Exhibits 1 and 2**). The track extension will cross Loma Alta Creek on a pre-cast concrete bridge, and the existing main line timber trestle railroad bridge over Loma Alta Creek will be replaced by a pre-cast concrete bridge (**Exhibits 3-5**). The project also includes modification of at-grade track crossings at Oceanside Boulevard and Cassidy Street, installation of a new signal control point at MP 228.4, new cross-overs at MP 226.7, a new turnout at MP 228.4, and removal of an existing turnout at MP 227.2. The proposed passing track extension is designed for train operating speeds up to 90 mph and the proposed turnouts will permit speeds up to 60 mph. The project area is bounded to the north by Oceanside Boulevard, to the west by South Myers Street, to the east by South Cleveland Street and Broadway Street, and to the south by a distance of approximately 75 feet south of the southern end of Broadway Street above Buena Vista Lagoon. The project area is located on land owned by NCTD adjacent to industrial, residential, and recreational areas, and is approximately 700 feet inland from the Pacific Ocean.

The *Environmental Report* for the proposed project examines the existing and proposed bridges over Loma Alta Creek:

Currently, there is a timber trestle railroad bridge supporting the existing track over Loma Alta Creek. This bridge is a sixteen span 236-foot long, plus or minus, ballasted deck bridge supported by 102 timber piles. The Project consists of removing the timber trestle bridge and constructing two new bridges, one for the existing track and one for the extension of the passing track. A sewer line is located under the trestle bridge and will be in continuous service during the project.

In order to ensure continuous train traffic flow, the new pre-cast concrete bridge will be constructed before the removal of the existing bridge. Construction of each bridge is expected to take about six months, with six months or more between completion of the first bridge and start of construction of the second bridge. The bridge sub-structure work performed near or in Loma Alta Creek will take about eight weeks for each bridge. The timber piles for the existing bridge will be cut four feet below the creek bed level. The portion of the pile deeper than this level will be left in place in order to minimize disturbance to the creek bed. The timbers that are removed will be disposed of in accordance with applicable federal, state, and local regulations.

Both of the new bridges will be near identical. They will be constructed of pre-cast concrete, supported on reinforced concrete steel shell piles and consist of five spans. The piers of both bridges will be aligned to minimize impedance to water flow in Loma Alta Creek. Each pier will be composed of sixteen piles arranged in two columns of eight. Each

pile will be 18-inch diameter, steel encased, and constructed of reinforced concrete. Depending on soil conditions the piles will be driven approximately 55 feet into the creek bed and bank by pile driving equipment.

The piles will be tied together near grade by reinforced concrete footings. For each bridge, four piers and two abutments will support the five spans of the bridge. Each of the pier footings will be 9 feet wide, 19.5 feet long, and 3 feet thick, for a total footprint area of approximately 175 sq.ft. A small gap will separate the footing of the adjacent bridge. The abutments on both banks of Loma Alta Creek will have footings of 160 sq.ft. area each. The total area for all eight pier footings including the four abutments is approximately 2,040 sq.ft.

In situ concrete placement will be limited to the piles, pile footings, pile caps, and other minor structures of the bridges. The main girders and deck of the bridges will be pre-cast in facilities away from the construction site, transported and set in place using cranes. There will be no bridge false work over or in the creek bed.

Construction of the pier footings and abutments in the creek bed will require excavating the top three feet of the creek bed soil for concrete placement. A total of about 6,120 cu.ft. of material will be excavated for the eight piles and four abutments. About 1,500 cu.ft. of temporary fill will be deposited in an approximately 500 sq.ft. area around pier No. 4 in order to raise the level of channel bed above the water surface during installation of the pier. The other piers and abutments are on dry land during the dry months, when construction is planned; therefore, temporary fill is not expected to be required for the installation of these piers, although conservative estimates give a fill volume of approximately 500 cu.ft. over an area of approximately 200 sq.ft. for each pier This technique is simple and would avoid more expensive and invasive methods such as cofferdams. Temporary fill will consist of sandbags, or other erosion resistant borrow material, to allow construction in the submerged areas of pier Nos. 4 and 5. A total volume of about 2,000 cu.ft. will be used for this temporary fill.

Permanent and temporary fill will be placed into waters of the U.S. and wetlands to allow for the installation of concrete footings and abutments. A total of about 6,120 cu.ft. of permanent fill will be placed into the waters of the U.S. and wetlands for the bridge piers. This will permanently affect an approximate area of 2,040 sq.ft. (0.047 acres). Of the area permanently filled, about 350 sq.ft. (0.008 acres) are in waters of the U.S. and approximately 1,690 sq.ft. (0.039 acres) are in wetlands. A total of about 5,520 cu.ft. of temporary fill will be placed into waters of the U.S. and wetlands affecting a surface area of about 1,840 sq.ft. This temporary fill for construction staging and for pier construction will be removed after construction of the footings is complete.

In addition, approximately 2,402 square feet of wetland habitat would be permanently filled due to the construction of a fill slope to support a 240-foot-long section of the passing track extension immediately north of the Loma Alta Creek bridge. This brings the total area of permanent wetland fill to 4,442 sq.ft., or approximately 0.1 acres.

NCTD proposes to mitigate at a 3:1 ratio the project-related impacts to wetland habitat by restoring 0.3 acres of brackish water wetlands at the project site within the Loma Alta Creek floodplain. In addition, wetlands affected by temporary fill due to construction activities will be restored to pre-project conditions. A draft wetland restoration and revegetation plan was submitted with the consistency certification, and is discussed in detail in Section III.A of this report. The final restoration plan will be submitted to the Executive Director prior to the start of project construction.

The proposed project will use three staging areas during construction (**Exhibit 6**). A 200' by 50' general construction equipment storage area will be sited west of the mainline track, south of Ocean Boulevard. A 100' by 100' bridge construction equipment staging area will be sited east of the main track and north of Loma Alta Creek. Both of these staging areas are located on upland terrain devoid of environmentally sensitive habitat. The third staging area will support the crane and pile driving equipment used for constructing the piers and bridges. This 50' by 100' site is located on either side of the existing timber trestle bridge, and is within wetland habitat on the north bank of Loma Alta Creek.

NCTD expects that the construction period will last approximately 18 months and is currently scheduled to occur between the summer of 2007 and December 2008.

B. Background/Need. The subject railroad line has served coastal Southern California for 115 years. In the late 1800s, the Atchison, Topeka and Santa Fe railway (AT&SF) built the “Surf Line” railroad line between Los Angeles and San Diego. The North San Diego County Transit Development Board (NSDCTDB) purchased the Surf Line in 1995. The project corridor currently includes a single mainline track and several passing tracks and sidings within the North County Transit District (NCTD)/San Diego Northern Railway (SDNR) right-of-way. At present there are 60 miles of main line track between San Diego and the Orange County line, of which 19 miles are double-tracked. The track is used for train travel in the Los Angeles to San Diego (LOSSAN) corridor and which currently operates at near full capacity. Approximately 51 daily trains operated by NCTD, Amtrak, Metrolink, and BNSF railroad use the corridor and NCTD reports that train delays are common. Within most of the corridor only one mainline track is available for both northbound and southbound trains, and trains must therefore adhere to a fixed schedule in order to operate efficiently. However, when one train goes off schedule, the remaining trains must stop and wait on an existing siding for the first train to get back on schedule. This causes a cascading delay effect, negatively affecting on-time performance and service reliability. Increasing the amount of double track by connecting the existing sidings would allow trains to pass each other while underway, thus reducing overall train delays and providing improved, more reliable service.

The need for this project stems in part from the high levels of automobile congestion on Southern California's highway system. Caltrans' 2002-published California State Rail Plan, 2001-02 to 2010-11, articulates its vision for intercity passenger rail as achieving three objectives: (1) to “provide relief to highway and airway congestion” through reliable and efficient intercity rail service; (2) to promote intercity rail to “provide a rail transportation alternative to other travel

modes”; and (3) to “improve air quality, conserve fuel, and contribute to efficient and environmentally superior land use.” NCTD reports that he proposed Oceanside passing track extension project would increase the capacity of the corridor enough to reduce the number and duration of train delays, thus improving service reliability and inducing people to turn to passenger rail as an alternative travel mode to the personal automobile.

The Commission has previously concurred with three NCTD consistency certifications for double tracking in northern San Diego County: (1) the 2.6-mile-long Pulgas to San Onofre double tracking project at the north end of Camp Pendleton (CC-86-03); (2) the 2.9-mile-long Santa Margarita River double tracking project at the south end of Camp Pendleton (CC-52-05); and (3) the 2.7-mile-long O’Neil to Flores double-track project in central Camp Pendleton (CC-004-05)(**Exhibit 7**).

C. Procedures – Permitting Issue. The project triggers federal consistency review because it needs a U.S. Army Corps of Engineers (“Section 404”) permit. The Commission also believes it is subject to the permitting requirements of the Coastal Act; however, NCTD disagrees with this position. Notwithstanding this disagreement about whether a coastal development permit (CDP) is needed, the Commission concurs with this consistency certification because it is consistent with the Coastal Act. The Commission further notes that the NCTD has applied for a number of permits for its rail improvement activities in other sections of the coast, including CDP’s No.: 6-03-102-G (Agua Hedionda emergency repairs), 6-02-152 (San Luis Rey River bridge repair), 6-02-151 (Agua Hedionda bridge), 6-02-102 (Del Mar drainage outlets), 6-02-80 (Santa Margarita Bridge repair), 6-01-64 (Balboa Avenue), 6-01-108 (Tecolote Creek), 6-93-60 (Del Mar), 6-94-207 (Solana Beach), 6-93-106 (Carlsbad), and 6-93-105 (Camp Pendleton).

D. Applicant’s Consistency Certification. North County Transit District has certified that the proposed activity complies with California’s approved coastal management program and will be conducted in a manner consistent with such program.

II. Staff Recommendation:

The staff recommends that the Commission adopt the following motion:

Motion: I move that the Commission **concur** with North County Transit District’s consistency certification CC-008-07 that the project described therein is fully consistent with the enforceable policies of the California Coastal Management Program (CCMP).

Staff Recommendation:

The staff recommends a **YES** vote on the motion. Passage of this motion will result in an agreement with the certification and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

Resolution to Concur with Consistency Certification:

The Commission hereby **concurs** with the consistency certification made by North County Transit District for the proposed project, finding that the project is consistent with the enforceable policies of the California Coastal Management Program.

III. Findings and Declarations:

The Commission finds and declares as follows:

A. Wetlands and Environmentally Sensitive Habitat. The Coastal Act provides the following:

Section 30233(a). The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

...

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines

...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing wetlands and estuaries shall maintain or enhance the functional capacity of the wetland or estuary.

Section 30240.

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The proposed passing track extension is located primarily within a highly developed urban landscape, except for the bridge crossing of Loma Alta Creek near the north end of the project corridor. Field surveys of biological resources within and adjacent to the corridor were conducted by NCTD biological consultants in June and December 2002, June 2003, and October 2006. The objectives were to survey vegetation composition and distribution, aquatic habitat,

water quality, and wildlife, and to determine if habitat for sensitive species was present. The project *Environmental Report* states that:

No federally or state listed threatened or endangered species are known to occur on the project site or within the waters of Loma Alta Creek . . . No species of endangered or threatened plants were observed during a habitat assessment survey . . . No special status plant species were observed in the project area and no habitat for non-aquatic endangered and threatened wildlife species was observed.

*The vegetation in most of the project area consists of ruderal vegetation dominated by non-native species . . . In the floodplain of Loma Alta Creek, vegetation is dominated by pickleweed (*Salicornia virginica*), saltgrass (*Distichlis spicata*), non-native Bermuda grass (*Cynodon sp.*), and non-native fivehorn smotherweed (*Bassia hyssopifolia*).*

. . .

Construction activities associated with the Oceanside Passing Track Expansion Project will occur in the NCTD right-of-way. With the exception of the portion of the project adjacent to Loma Alta Creek, vegetation and wildlife habitat are sparse due to maintenance by NCTD. Habitat for endangered or threatened wildlife species in the Project area, including Loma Alta Creek, is limited and degraded due to several activities including: channelization of the creek; development of access routes reinforced with roadbed material on the north side of the creek; and modifications made for the La Salina Wastewater Treatment Plant, Buccaneer park, La Salina Trailer Park, and other commercial facilities. Loma Alta Creek is not Designated Critical Resource Water nor does the state or federal government designate it as an area with particular environmental or ecological significance.

NCTD has undergone an extensive, multi-project, formal Section 7 Consultation with the U.S. Fish and Wildlife Service, and that consultation included the Oceanside passing track extension project. The Service issued a *Programmatic Biological Opinion for the Rail Corridor from the Orange County Border South to Southern Oceanside for Operations and Maintenance, and Six Double-Track Projects in San Diego County, California (1-6-05-P-4123.2)* on September 9, 2005, as amended on November 14, 2005. The *Biological Opinion* covers the area between the north side of Marine Corps Base Camp Pendleton to southern Oceanside, reviews on a programmatic level six double-track railroad projects, reviews on a project-specific basis three of the double-track projects (including the Oceanside passing track extension), and reviews construction, operations, and maintenance activities. The *Biological Opinion* includes avoidance, minimization, mitigation, and monitoring measures and concluded that the proposed Oceanside Passing Track Extension project is not likely to jeopardize any designated critical habitat of or the continued existence of the California coastal gnatcatcher, least Bell's vireo, tidewater goby, and arroyo toad. However, the *Biological Opinion* also provides conservation measures to avoid and minimize effects to threatened, endangered, or sensitive wildlife species potentially occurring in the project area, and includes general conservation measures, and conservation measures for temporary and permanent vegetation impacts (**Exhibit 8**). Conservation measures for the latter include requirements for a project-specific vegetation

restoration plan, a five-year maintenance and monitoring program, performance criteria and remediation (if necessary), and annual reports.

The Commission agrees with the findings in the NCTD *Environmental Report* and the U.S. Fish and Wildlife Service *Biological Opinion* that the only environmentally sensitive habitats that will be adversely affected by construction of the proposed passing track extension are Loma Alta Creek and adjacent brackish water wetlands. The proposed project includes the removal of the existing timber trestle railroad bridge and construction of two pre-cast concrete railroad bridges over Loma Alta Creek. NCTD's wetland delineation for the proposed project considered both U.S. Army Corps of Engineers and the more stringent Coastal Act wetland definitions, and concluded that permanent wetland losses from bridge support piers and the fill slope on the west side of the passing track extension north of Loma Alta Creek would total 4,442 sq.ft. (**Exhibits 9 and 10**). Temporary construction-related impacts to open water and wetland habitat would total 1,840 sq.ft. (A detailed description of the permanent and temporary wetland impacts from the proposed project is found on Page 5 of this report.) Due to this wetland fill, the project triggers the three-part test of Section 30233(a) which requires determining whether the project complies with the allowable use, alternatives, and mitigation tests of that section.

1. Allowable Use. Under the first of these tests, a project must qualify as one of the eight stated uses allowed under Section 30233(a). The Commission has considered minor expansions of existing roads, an airport runway (City of Santa Barbara, CC-058-02), and NCTD double tracking railroad projects (CC-086-03, CC-052-05) in certain situations to qualify as "incidental public service purposes," and thus allowable under Section 30233(a)(5), but only where no other feasible less damaging alternative exists and the expansion is necessary to maintain existing traffic capacity.

The Court of Appeal has recognized this definition of incidental public service as a permissible interpretation of the Coastal Act. In the case of *Bolsa Chica Land Trust et al., v. The Superior Court of San Diego County* (1999) 71 Cal.App.4th 493, 517, the Court found that:

. . . we accept Commission's interpretation of sections 30233 and 30240 . . . In particular we note that under Commission's interpretation, incidental public services are limited to temporary disruptions and do not usually include permanent roadway expansions. Roadway expansions are permitted only when no other alternative exists and the expansion is necessary to maintain existing traffic capacity.

NCTD states in the subject consistency certification that "The purpose of the project is to provide operational flexibility and increase service reliability and on-time performance of trains in the Los Angeles – San Diego Corridor. This purpose is an incidental public service as outlined in Section 30233 (a)(5)." The Commission has accepted this assertion in two previous concurrences with NCTD double track construction projects in northern San Diego County which involved fill of coastal waters and wetlands (CC-086-03 and CC-052-05). The Commission found in CC-052-05 that:

Allowable Use Test - Coastal Act Section 30233(a). Section 30233(a) does not authorize wetland fill unless it meets the “allowable-use” test. Similar to the Commission decision regarding safety improvements at the Santa Barbara Airport (CC-58-01), the proposed project is an allowable use as an incidental public service because it is necessary to maintain existing passenger service. The second main track project is being proposed to streamline service for existing trains, and would not result in an increase in the number of trains (capacity) utilizing the tracks. Rather, the proposed project would improve mass transit services by providing more efficient services, thereby increasing the incentive for travelers to choose this mass transit option instead of personal automobiles. Therefore, any increase in utilization of the train service would be related to an increase in number of passengers aboard, rather than an expansion of train services.

However, the Commission found more recently in CC-004-05 (NCTD, O’Neil to Flores double track) that:

In finding those projects [CC-086-03 and CC-052-05] “limited expansions” and “necessary to maintain existing capacity,” and thus an allowable use as an incidental public service under Section 30233(a)(5), the Commission reserved the concern over future double tracking proposals, stating that they would not necessarily continue to qualify under this section, because at some point with increasing numbers of double tracking proposals, the double tracking: (a) will no longer be limited; and (b) will contain enough length of a second set of tracks to in fact constitute an increase in capacity. However, at that time and in those locations the Commission found that the double tracking projects did not meet either of these thresholds that would render the projects ineligible for consideration as an incidental public service.

The piecemeal nature of NCTD’s submittals has faced the Commission with a continuum of improvements, rather than a single unified project, which has made the determination of when increases in capacity are triggered a difficult one. To assist in this determination the Commission staff has requested information both about future double tracking proposals NCTD (or other proponents) are considering or planning for, and about documenting the public access benefits of improving public transit. On the first request, NCTD states future double-tracking proposals on Camp Pendleton would likely only be part of more comprehensive transportation improvement programs such as Los Angeles-San Diego Rail Corridor Agency (LOSSAN) and/or California High Speed Rail Authority projects. NCTD states:

Currently, no additional future double-track projects have been identified by NCTD to be constructed within the Camp Pendleton area. It should be noted, however, that NCTD performs railroad maintenance-of-way activities on a continuous basis, is required to respond promptly to emergency situations as they may occur along the railroad right-of-way, and is mindful of pursuing potential opportunities that may improve railroad operations. As such, it is possible that double-tracking projects may arise in the future as individual projects or as part of comprehensive transportation improvement programs, such as LOSSAN and/or the California High Speed Rail Authority.

On the second request for individual and cumulative benefits, NCTD has provided the detailed discussion . . . which establish that the project will benefit public access. This discussion, combined with the programmatic operational discussion contained in the Fish and Wildlife Service's Biological Opinion . . . make it clear that the numbers and speeds of trains are going to increase, if not individually from this project, then certainly cumulatively based on currently planned improvements, leading the Commission to conclude that the project is likely to increase capacity. If it increases capacity, it does not qualify as an allowable use under Section 30233(a) as an incidental public service, and none of the other eight allowable uses in Section 30233 apply. Therefore, as discussed in the previous section of this report (Section B, and with elaboration in Section F), the only way the Commission could find the project consistent with the Coastal Act would be through the "conflict resolution" provision (Section 30007.5).

As a result, while the Commission concurred with CC-004-05, it found that the project was not an allowable use under Section 30233(a). However, the Commission found that the impacts on public access, water and air quality, and energy conservation from not constructing the project would be more significant and adverse than the project's wetland habitat impacts (as mitigated). Using the "conflict resolution" provision of Section 30007.5 of the Coastal Act, the Commission concluded that concurrence with the consistency certification would, on balance, be most protective of coastal resources.

The Commission is faced with a similar "allowable use" challenge in the subject consistency certification which provides for construction of the fourth double-track project in the San Onofre – Oceanside rail corridor. The Commission staff requested information from NCTD and Amtrak about the status of the three previous double-track projects concurred with by the Commission and potential future double tracking projects that both agencies might be considering. Amtrak responded that two of the projects are completed (San Onofre-Pulgas (CC-086-03) and O'Neil-Flores (CC-004-05)) but that the third (Santa Margarita (CC-052-05)) is still undergoing final engineering design. Amtrak also stated that the final two double tracking projects (San Mateo Creek and San Luis Rey River) included in the U.S. Fish and Wildlife Service's 2005 *Programmatic Biological Opinion for the Rail Corridor from the Orange County Border to Southern Oceanside for Operations and Maintenance, and Six Double Track Projects in San Diego County, California (1-6-05-P-4123.2)* have not been designed, funded, nor analyzed for detailed environmental impacts. Amtrak stated that it does not know when those two projects (or additional double track railroad projects between San Clemente and San Diego) will be constructed or when the Commission could expect to review other future double-track projects in the region.

However, the 2005 *Programmatic Biological Opinion* does include a brief summary of planning activity for double tracking the entire Los Angeles to San Diego rail corridor:

Double-track construction between the Orange County border and just north of the Buena Vista Lagoon in south Oceanside is part of a larger strategic planning effort for the second most heavily traveled intercity passenger rail corridor in the country and the only existing

rail link between the cities of Los Angeles and San Diego (LOSSAN). The purpose of double-track construction in the LOSSAN corridor is to help meet the projected increase in travel demand for the year 2025 between the cities of Los Angeles and San Diego, to substantially reduce the travel time and increase reliability, and to increase the safety and accessibility of passenger rail service throughout the LOSSAN corridor (FRA and Caltrans 2004).

In addition, Amtrak reported in the May 2007 issue of *Planning* (the Journal of the American Planning Association) that ridership on the Pacific Surfliner rail service linking San Diego, Los Angeles, and San Luis Obispo has increased by 56% since 2000.

The Commission previously determined in CC-004-05 that the programmatic railroad operational discussion contained in the U.S. Fish and Wildlife Service's 2005 *Programmatic Biological Opinion* made it clear that the numbers and speeds of trains in the corridor are going to increase over time (if not individually from the CC-004-05 project then certainly cumulatively based on planned trackway improvements) and that the CC-004-05 project would likely increase capacity in the LOSSAN corridor. Given that finding for the third double-tracking project in the corridor reviewed by the Commission, and given that the proposed project will add an additional 1.2 miles of double-tracking in the corridor, the Commission therefore reaches the same conclusion in this, the fourth, double-tracking project. The proposed Oceanside passing track extension will, cumulatively, serve to increase the capacity of the LOSSAN corridor.

As explained previously in this report, if a transportation project increases capacity, it does not qualify as an allowable use under Section 30233(a) as an incidental public service, and none of the other seven allowable uses in Section 30233 apply. Therefore, the proposed project is not an allowable use under Section 30233(a) and, as discussed below in Section III.G of this report, the only way the Commission could find this project consistent with the Coastal Act would be through the "conflict resolution" provision of Section 30007.5.

2. Alternatives. The objective of the proposed project is to extend the existing passing track, located to the west of the main line track, southward for an additional 1.2 miles to improve operational efficiencies for passenger and freight railroad operations in the LOSSAN corridor. The proposed project is located wholly within the NCTD right-of-way, which provides adequate room for the track extension, and the right-of-way is located within a highly developed urban area. Except for wetlands at the Loma Alta Creek crossing, the proposed project would not pass through or near environmentally sensitive habitat. As a result, NCTD states that alternative passing track design layouts at the Oceanside project site (e.g., constructing an alternative main line route, placing the passing track on the east side of the main line) are not feasible due to prohibitive costs, engineering constraints, and environmental impacts, and that the no-project alternative would not meet the project objective. However, construction of the proposed project does not commit the Commission to approve additional sections of double-track in the coastal zone portion of the LOSSAN corridor, particularly where such construction may generate significant adverse impacts on coastal resources and where less environmentally damaging alternatives may be feasible. The proposed Oceanside passing track extension, and the three sections of double-track on Camp Pendleton Marine Corps Base previously approved by the

Commission under consistency certifications from NCTD, are designed to accommodate permanent double-track railroad operations and will not require structural modifications that would likely generate additional impacts to coastal resources, in particular wetland and other environmentally sensitive habitats. As discussed in the following section, NCTD has designed the Oceanside passing track project to avoid, minimize, and mitigate impacts to wetland habitat. Therefore, the Commission agrees with the NCTD that the proposed project represents the least environmentally damaging alternative and is consistent with the alternatives test of Section 30233(a).

3. Mitigation. NCTD submitted a *Draft On-Site Wetland Restoration and Monitoring Plan* for the proposed project as a part of the consistency certification. The *Plan* describes the proposed mitigation measures for impacts to waters and wetlands resulting from construction of the two bridges over Loma Alta Creek, located approximately 700 feet inland of the Pacific Ocean. The *Plan* includes the following elements:

- Project Description
- Existing Conditions
- Restoration Methodology
- Monitoring and Maintenance
- Contingency Measures
- Biological Resources Assessment Results

The *Plan* states that:

Construction of the proposed double track project and implementation of wetland restoration will be contained within the NCTD right of way which extends a maximum of 100 feet on either side of the existing track structure. This area is also referred to as the Area of Potential Effect (APE). The restoration area includes several habitat types including brackish water wetland, open water, disturbed/ruderal wetland areas, and developed land. In general, the restoration area includes all existing brackish water wetland areas and disturbed sites with a high groundwater table. This area extends up to 500 feet northwest and southeast from Loma Alta Creek. Appendix A provides photographs of the restoration site at Loma Alta Creek. Within this area, 0.31 acres are proposed for mitigation.

. . . the area north of Loma Alta Creek is heavily disturbed and is surrounded by the La Salina Wastewater Treatment Plant and a commercial facility. Several areas adjacent to the existing wetland habitat have been modified by importation of fill and vehicle traffic. Exotic plant species are prevalent in the marsh area adjacent to the creek. The area north of the creek and west of the existing track has been filled for creation of a road. Likewise, the wetland area on the southwest side of the existing track has been disturbed by vehicle traffic and colonization of exotic plant species. The southwest side of the creek is bordered by a concrete walkway and Buccaneer park and includes several landscape trees and shrubs. On the southeast side of the creek, a small ditch lies between the railroad embankment to the west and La Salina Trailer Park to the east.

The *Plan* next describes the following vegetation communities present within the restoration area:

Open Water. *Loma Alta Creek provides relatively deep brackish water habitat. Upstream inflows are freshwater while the downstream end receives tidal influence through groundwater and possible overwash during high surf or high tide conditions. Special status species, including the tidewater goby, are not known to occur in Loma Alta Creek (USFWS 2005).*

*Brackish/Freshwater Marsh. On either side of Loma Alta Creek, the terrain drops abruptly to a low-lying area along the creek. This section includes areas of brackish or freshwater marsh vegetation. Within a few hundred feet of Loma Alta Creek the presence of a high groundwater table has created brackish and freshwater marsh habitat. The incidence of exotic plant species is high, but some areas of native saltmarsh are present. Dominant species are pickleweed (*Salicornia virginica*), saltgrass (*Distichlis spicata*), sparscale (*Atriplex triangularis*), jaumea (*Jaumea carnosa*), fivehorn smotherweed (*Bassia hyssopifolia*), and other wetland species dominate the vegetation in this area. The perimeter of this area is disturbed by vehicle and foot traffic, and many areas are dominated by exotic plant species. The exotic Bermuda grass (*Cynodon dactylon*) is present in occasional patches. Larger areas, especially along the creek, are being invaded by the exotic African Bermuda grass (*Cynodon transvalensis*). Areas that are greater than 90 percent dominated by exotic species are included in the following resource categories, Disturbed Wetland Areas and Ruderal Areas.*

Disturbed Wetland Areas. *Areas mapped as ruderal/disturbed wetland are generally present on the margins of existing marsh habitat. Disturbance by vehicle traffic, importation of fill or domination by exotic species is characteristic of these sites. These areas generally have shallow groundwater, and would be capable of supporting marsh vegetation in the absence of disturbance factors. The area to the southwest of the existing railroad is heavily dominated by the exotic fivehorn smotherweed. The area located in the northwest portion of the site is a historical access road and has been modified by importation of fill material. Along the eastern and western shore of Loma Alta Creek the exotic Bermuda grass (*Cynodon dactylon*) and African Bermuda grass (*Cynodon transvalensis*) are dominant. Mitigation is proposed for these locations.*

Ruderal Areas. *Areas mapped as ruderal are dominated by exotic species. These areas are generally directly adjacent to developed areas, but are colonized by exotic or other naturalized species. Much of the undeveloped area to the west of the track had very short herbaceous vegetation on December 5, 2002, including Australian saltbush (*Atriplex semibaccata*), Russian thistle (*Salsola tragus*), and several non-native annual grasses: Italian ryegrass (*Lolium multiflorum*), ripgut brome (*Bromus diandrus*), and red brome (*Bromus madritensis* ssp. *rubens*). Patches of taller herbaceous vegetation included the previous species, as well as bristly ox tongue (*Picris echioides*), wild radish (*Raphanus sativus*), wavyleaf sealavender (*Limonium sinuatum*), and Menzies' goldenbush (*Isocoma menziesii*). Vegetation along the railroad embankment north of Loma Alta Creek included*

myoporum (Myoporum laetum), a patch of prickly-pear and one of cholla (Opuntia spp.), tree tobacco (Nicotiana glauca), and young palms. On June 3 and 4, 2003, an additional species, cretanweed (Hedypnois cretica), was observed in much of the upland area south of Loma Alta Creek. Two palm trees are located at the western edge of the site, at the base of the La Salina Wastewater Treatment Plant. During the October 26 and 27, 2006, site visit, the vegetation remained unchanged from that described above.

Developed Land. *Developed Land is dominated by buildings, roads, railroad or other urban and suburban development. These areas are colonized by exotic vegetation or planted with horticultural varieties. Buccaneer Park, southwest of Loma Alta Creek, is landscaped with trees and a lawn. The immediate vicinity bordering the existing track is kept primarily unvegetated.*

The *Plan* reports that Loma Alta Creek is channelized and is currently bordered on each side by rock riprap. The creek is tidally influenced and water level changes (approximately four inches) have been observed on-site, even when the mouth of the creek was closed by a sandbar. The creek is bordered by a narrow, low-lying bench with a maximum width of 380 feet, and the bench in turn is bordered by the existing railroad embankment, which rises abruptly to 20 feet above the elevation of the creek. A delineation of wetlands and other waters at the project site was performed on site by NCTD's biological consultant (ENTRIX) in December 2002 and June 2003, and was reconfirmed and refined on-site in October 2006. Coastal Act wetlands were delineated and mapped based on the presence of one of the following wetland attributes: wetland hydrology, hydric vegetation, or hydric soils. Approximately 1.2 acres of Coastal Act wetlands were determined to be located within the project area (100 feet on either side of the existing main line track) and are found only adjacent to Loma Alta Creek. The proposed project will result in the permanent loss of 0.1 acres of Coastal Act wetlands (representing 8.3 percent of the existing acreage at the site) and will temporarily affect 0.06 acres of Coastal Act wetlands (representing 5.0 percent of existing acreage).

The *Plan* states that the primary restoration goal is to restore 0.3 acres of brackish/freshwater marsh habitat in marginal/ruderal areas adjacent to healthy marsh habitat bordering Loma Alta Creek in order to compensate for the loss of 0.1 acres of wetlands from project construction. The *Plan* will also comply with the mitigation measures previously prescribed for the project in the 2005 USFWS *Programmatic Biological Opinion*. The *Plan* includes the establishment and maintenance of erosion control measures during construction, site remediation (i.e., appropriate grading and soil preparation), eradication of exotic species, revegetation with native plant species from local stock acclimated to the coastal environment, and maintenance and monitoring of mitigation areas. The desired vegetation pallet for the mitigation areas will include native plant species present in the area, primarily pickleweed, saltgrass, and jaumea. The main source of water for the restored wetlands will be tidally-influenced groundwater, with less significant inputs from overbank flows during heavy precipitation events and from high surf and tidal flows into the lagoon and lower creek.

Three mitigation areas are identified in the *Plan*:

Area A. 2,300 sq.ft. site (0.053 acres) located in the northeast corner of the restoration area. Currently unvegetated or very sparsely vegetated, composed of compacted fill for an access road, with a shallow groundwater table. Fill material will be removed and an appropriate final grade elevation will be established to ensure contact with groundwater. Vehicle traffic will be excluded and the site planted with native species.

Area B. 4,500 sq.ft. site (0.103 acres) located in the southeast corner of the restoration area. Vegetative cover is 100 percent but is dominated by exotic Bermuda grass and African Bermuda grass. Restoration will require eradication of exotic species with some planting of native species.

Area C. 9,540 sq.ft. site (0.219 acres) located on the western side of the restoration area. Mostly unvegetated due to its former use as an access road. Patchy pickleweed cover is found at the southeast corner and restoration here will focus on vehicle exclusion and planting of native species. The northwest corner of Area C is composed of fill soil and exotic vegetation. Restoration will involve removal of fill material, establishment of an appropriate final grade to ensure contact with groundwater, eradication of exotics, and revegetation with native species.

The *Plan* next describes the methodology by which the restoration areas will be restored, including information on grading, site preparation, erosion control, exotic species eradication, plant installation (e.g., hydroseeding, direct transplant of native on-site plants, container stock,), and irrigation. In brief:

- Grading in restoration areas will match the current elevation of adjacent wetland areas in order to create similar groundwater conditions and enable contact with overbank flows.
- Restoration areas will be ripped or scarified to a depth of six to twelve inches to reduce soil compaction and to create horizontal rills on the soil surface.
- Graded slopes will be stabilized with biodegradable erosion control fabric and other measures as required by the Storm Water Pollution Prevention Plan.
- A cycle of “grow and kill” will be used to remove non-native seed banks, and exotic species will be eradicated through a combination of mechanical and, only when necessary and at minimum levels, chemical methods.
- Revegetation plantings will be native California species grown from stock located in southern California and acclimated to the coastal environment. Hydroseeding will use a coastal sage scrub mixture. Where possible, all native plants displaced by project construction will be excavated and retained for transplanting.
- The need for supplemental irrigation is not expected at the restoration areas. Revegetation is scheduled to occur between October and February to take advantage of

winter precipitation. If supplemental irrigation is needed, it would likely be supplied by a water truck.

The *Plan* next describes the monitoring and maintenance elements of the restoration project:

NCTD will provide for a contractor to conduct monitoring and maintenance related to site revegetation and eradication of exotic species. The proposed monitoring and maintenance schedule will continue until final success criteria are achieved. The goal of monitoring is to establish data to support adaptive management of the restoration site, while providing regulatory agencies with information to determine if the project is in compliance with selection criteria. If any performance standards or final success criteria are not achieved, the permitting agencies could require the permittee to undertake remedial actions to ensure mitigation success, which could prolong the maintenance and monitoring period. Monitoring and maintenance will be performed monthly during plant establishment, on a quarterly basis during the first year, and at least twice per year thereafter for the 5-year monitoring period.

The *Plan* includes details on: (1) performance criteria for wetland soils and hydrology and plant cover, species diversity, and species composition; (2) monitoring methods, including schedules, qualitative monitoring, photo documentation, quantitative monitoring, and quadrat sampling; (3) maintenance actions; (4) annual monitoring reporting; and (5) potential remediation actions should restoration fall short of performance criteria, including planting density augmentation and supplemental irrigation. NCTD will provide the *Final On-Site Wetland Restoration and Monitoring Plan* to the Executive Director for review and concurrence prior to the start of project construction, and will also provide copies of the annual monitoring reports to the Executive Director.

4. Conclusion. The Commission finds that the proposed Oceanside passing track extension project is consistent with the wetland fill alternatives and mitigation tests, but is not consistent with the allowable use test, of Section 30233(a) of the Coastal Act for the reasons described above. Therefore, the only way the Commission could concur with this consistency certification would be if it finds the project consistent with the Coastal Act through the “conflict resolution” provision contained in Section 30007.5. As discussed in Sections III.B, III.C, and III.D of this report, not approving the project would be inconsistent with the water quality, public access, and air quality/energy consumption policies of the Coastal Act, because it would eliminate the project benefits to coastal resources from improving existing and future public access, reducing vehicle miles traveled, and improving air and water quality by reducing traffic congestion. Thus, the project creates a conflict between the allowable use test of the wetlands policy of the Coastal Act (Section 30233(a)) on the one hand, and the water quality, public access, and energy conservation policies of the Coastal Act (Sections 30231, 30232, 30210, 30212, 30252, and 30253) on the other. In the concluding section of this report (Section G) the Commission will resolve these conflicts and determine that concurrence with this consistency certification would, on balance, be most protective of significant coastal resources.

B. Water Quality. The Coastal Act provides the following:

Section 30231. The biological productivity of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232. Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

The San Diego Regional Water Quality Control Board has placed Loma Alta Creek and Slough on its list of Section 303(d) impaired water bodies, due the presence of bacteria and nutrients/eutrophication. NCTD has included commitments for water quality protection in its consistency certification, stating that it will develop and implement a Storm Water Pollution Prevention Plan (SWPPP, with monitoring and maintenance schedules) and will obtain a Clean Water Act Section 401 water quality certification from the San Diego Regional Water Quality Control Board. The NCTD will submit the SWPPP to the Commission's Executive Director for his review and concurrence prior to commencement of construction. The NCTD further states that the project includes, but is not limited to, the following best management practices for water quality protection:

Erosion Control. During construction activities, water pollution and erosion control measures will be implemented to minimize runoff and sediment from entering Loma Alta Creek. All construction near or in Loma Alta Creek will be done during the dry season to minimize the mobilization of sediment. The following measures will also be applied:

- Silt protection (fencing or other approved methods) will be in place and functional where necessary, prior to excavation of bed material and addition of fill material.*
- After bridge construction is completed, temporary fill will be removed and pre-construction contours will be restored where not altered by the permanent structure.*

Storage and Equipment Maintenance. The location of the staging area and access routes to the channels will be on pre-existing roadways and the NCTD rights-of-way (ROW). Storage and maintenance of equipment will be confined to the upland staging locations in the NCTD ROW, away from any jurisdictional waters or undisturbed habitat. Equipment or vehicles operated adjacent to the stream will be checked and maintained daily to prevent leaks of oil,

fuel or other material that, if introduced into the water, could be deleterious to aquatic life. When working within or near wetlands, the contractor will have an emergency spill containment kit to contain and remove spilled fuels, hydraulic fluids, etc. Likewise, equipment re-fueling or storage of these materials will not occur within 500 feet of wetlands and will be in accordance with approved BMPs.

Spill Control Measures. To mitigate potential impacts from spills of oils, lubricants, or other construction related hazardous materials, a project specific spill contingency plan for clean up of accidental spills will be developed and implemented.

Dust Control Measures. To reduce fugitive dust emissions during construction activities, a project specific dust control plan will be developed and implemented.

Erosion controls will also include post-construction revegetation efforts:

Ground surfaces will be regraded to pre-construction contours, except where the Project configuration requires permanent grade changes. Disturbed areas will be revegetated and/or hydroseeded with native plant species using seed and stock collected within a five-mile radius of the work area to the extent practicable. Seed sources outside the five-mile radius will be approved by the U.S. Fish and Wildlife Service to determine whether the source is acceptable.

In previous reviews of NCTD passing track projects, the Commission also concurred with NCTD's determination that:

Passenger rail vehicles are much cleaner than highway vehicles with respect to oil and grease drips. This is partially attributed to the fact that any drips from rail vehicles fall into a ballasted ROW, where gravel and soil act as a filter to prevent runoff from moving contaminants and because rail transportation involves less oil, grease, and other hydrocarbons than automobiles. On the other hand, automobiles are a significant source of hydrocarbons, which are then flushed by runoff from the Interstate 5 area into nearby water bodies. The proposed project will provide improved public transportation service and freight service, which will help reduce automobile congestion and reduce automobile vehicle miles traveled and the corresponding non-point source emissions.

As described in Section III.A of this report, the proposed project includes measures to protect wetland habitat. With those measures, and the aforementioned best management practices, the Commission finds that the proposed project will not cause significant water quality impacts at and adjacent to the project area and is consistent with the water quality protection policies of the CCMP (Coastal Act Sections 30231 and 30232).

C. Public Access and Recreation. Section 30210 of the Coastal Act provides:

Section 30210. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational

opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212 provides that access should not be provided where it would be inconsistent with public safety, military security needs, or the protection of fragile coastal resources. Section 30252 encourages public transit and identifies reducing traffic congestion as a coastal access benefit, providing, in part, that:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service . . .

Concerning access issues, NCTD maintains that the project will not interfere with existing public access to coastal areas and recreational opportunities. NCTD points out that the existing railroad right-of-way is not open to general access (beyond train travel itself) and is controlled due to public safety requirements. NCTD asserts that the project conforms with the public access objectives of the Coastal Act both because it would not alter access to any existing public coastal accessways, and because it would benefit public coastal access and reduce traffic congestion by providing improved public transportation rail services (i.e., Coaster, Metrolink, Pacific Surfliner) as an alternative to individual vehicles. NCTD also points out that: (1) any freight train service improvements would also contribute to relieving congestion on I-5; (2) construction and staging activities would be located outside publicly accessible areas and thus avoid affects to existing access; and (3) the project will contribute to reduced energy consumption and vehicle miles traveled by providing a more efficient alternative to personal automobile travel, consistent both with Section 30252 as well as another Coastal Act goal expressed in Section 30253 (related to air quality).

In reviewing a previous NCTD proposal for the Oceanside-Escondido Rail Project (CC-029-02), which was proposed from inland areas to the shoreline and was a conversion of a freight rail corridor to a public transit passenger rail system connecting Oceanside, Vista, San Marcos, Escondido, and unincorporated areas of San Diego County, the Commission noted that: (a) traffic congestion adversely affects public access to the shoreline; (b) Section 30252 of the Coastal Act identifies the connection between public transit and public access to the shoreline; (c) although that project was partly parallel and partly perpendicular to the shoreline, because its service area included coastal destinations (including public beaches and a recreational boating harbor in Oceanside), it would provide an alternative means to get to the ocean; (d) it would reduce auto-related air emissions, thereby contributing to the improvement of regional air quality; (e) as part of a regional public transportation system, including bus service, light-rail and commuter trains, and trolleys, the project would increase acceptance of public transit as a desirable mode of transportation; and (f) as its acceptance and use increases, public agencies may be motivated to further improve the public transit system and these improvements will result in corresponding reductions in traffic congestion. The Commission concluded in CC-029-02 that:

. . . the proposed project will improve public access to the shoreline by reducing traffic on roads that also provide for shoreline access and by encouraging mass transit as an

alternative means to get to the shoreline. Therefore, the Commission finds that the proposed project is consistent with Sections 30210 and 30252 of the Coastal Act, and thus it is consistent with the access policies of the CCMP.

Thus, in reviewing several past actions involving public transit improvements in San Diego County, including the previous NCTD double tracking projects to the north (CC-086-03, CC-004-05, and CC-052-05), the Commission has recognized that: (1) traffic congestion constitutes a constraint on public recreation and access to the shoreline; (2) increased traffic on highways such as I-5, which is a major coastal access thoroughfare, reduces the ability of the public to attain access to coastal recreation areas and makes it more difficult for the public to get to the beach; and (3) improvements to public transit benefit public access, as discussed in Section 30252.

In the subject consistency certification for the Oceanside passing track extension, NCTD has addressed potential temporary access issues raised by construction activities, as well as the project's potential long-term benefits to public access through improvements to public transit. The consistency certification states that:

The project is located approximately 0.5 miles from the beach. Several major roadways provide access to the beach in and around the project vicinity including Oceanside Boulevard, Whaley Street, Cassidy Street, and Wisconsin Avenue. The project involves modifying the existing at-grade track crossings at Oceanside Boulevard and Cassidy Street. A traffic detour plan will be developed in order to provide safe and continuous traffic flow. All legal vehicular traffic and legal pedestrian walkways in the project area will be maintained during construction using barricades, warning signs and warning lights as required. Also, as construction and staging areas will be limited to the NCTD right-of-way (ROW), no other portions of the proposed project will limit access to the beach.

The consistency certification also states that project construction noise will cause temporary disturbances to users of Buccaneer Park (located on NCTD land west of the railroad track and south of Loma Alta Creek), and that the foot of the passing track embankment will encroach approximately 20 feet onto the eastern boundary of the park. However, the park will remain open throughout the approximate 18-month construction period and NCTD will install and maintain a demolition protection barrier to keep the existing railroad underpass walkway (located on the south bank of Loma Alta Creek) open during the construction period. The project will not create any long-term, significant adverse effects on the users of Buccaneer Park.

NCTD further states in the project *Environmental Report* that the project is a coordinated effort involving several transportation agencies:

These agencies include Amtrak, Caltrans and the North County Transit District (NCTD). Amtrak is leading the effort as directed by NCTD the owner of the corridor or right of way for the Project with funding provided by Caltrans. The Project is to extend the existing passing track at Oceanside by 1.2 miles toward San Diego. The purpose of the Project is to

provide operational flexibility to increase service reliability and enhance on-time performance.

At present there are 60 miles of main line track between San Diego and Orange County and only 19 of the 60 miles are double tracked. This corridor presently serves 51 daily trains operated by Amtrak, NCTD, Metrolink and BNSF railroad. Already, train delays are common and with the projected increase in the number of trains and ridership, the proposed extension of the Oceanside passing track is expected to minimize further deterioration in service reliability.

The completion of this project will help to resolve current operational delays and enhance the capacity and utility of the Los Angeles-San Diego (LOSSAN) Corridor. Specifically, more track capacity is needed in a congested segment of the railroad line. Rail passenger service between San Diego, Oceanside, Fullerton and Los Angeles share this track with the west end of the Burlington Northern Santa Fe (BNSF) transcontinental main line. The Coaster, Pacific Surfliner, as well as freight service on this line from Oceanside to San Diego, will benefit by the operational advantages presented by the construction of a 1.2 mile section of double track from MP 227.2 to MP 228.4 and the addition of a new 240 foot bridge over Loma Alta Creek (MP 227.6).

The Commission finds that the proposed project would, both individually and cumulatively, provide public access and recreation benefits, by reducing highway traffic congestion along the coast and improving public transit services within the coastal zone. The Commission therefore finds that the proposed project is consistent with the public access and recreation policies of the CCMP (Coastal Act Sections 30210-12 and 30252).

D. Air Quality and Energy Consumption. Section 30253(4) provides that new development shall “minimize energy consumption and vehicle miles traveled.” In reviewing NCTD’s proposal for Oceanside-Escondido Rail Project (CC-029-02), the Commission noted that the public transit project: (a) would reduce auto-related air emissions, thereby contributing to the improvement of regional air quality; (b) as part of a regional public transportation system, including bus service, light-rail and commuter trains, and trolleys, the project would increase acceptance of public transit as a desirable mode of transportation; and (c) as its acceptance and use increases, public agencies may be motivated to further improve the public transit system and these improvements will result in corresponding reductions in traffic congestion. The Commission noted:

The air quality benefits [cited in that project’s EIR] are partially offset by increased pollution caused by the train’s use of diesel fuel. However, as described in the Access Section above, the proposed project will probably have significant VMT reductions as the regional mass transit program expands and as public transit becomes a more accepted mode of transportation. As the percentage of traffic accommodated by mass transit grows, there will be a corresponding reduction in air pollution from automobiles. However, there will not be a corresponding increase in air pollution as ridership of the rail system grows. As ridership grows there will be more reductions in air quality impacts from automobiles.

In conclusion, the Commission finds that the proposed project will reduce energy consumption and improve air quality.... Therefore, the Commission finds that the project is consistent with Section 30253 of the Coastal Act, and thus with the energy consumption and air quality policies of the CCMP.

For the subject project, NCTD states that the project's air quality benefits include reduced idling time by automobiles on highways and train locomotives in the LOSSAN corridor and will lead to reduced emissions of pollutants. The Commission finds that the proposed project will help to reduce energy consumption and improve air quality and is therefore consistent with the air quality policy of the CCMP (Coastal Act Section 30253(4)).

E. Public Views. Section 30251 of the Coastal Act provides:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The project *Environmental Report* states that:

As the project will be at grade with the existing rail track, views to and along the ocean will not be affected by the project. Restoration of the Loma Alta Creek area . . . will return this area to pre-construction conditions where possible, causing minimal impact to natural landforms and aesthetic qualities in the area. The only change to the visual character of the area will be the replacement of the wood trestle bridge with two concrete bridges. The bridge replacement will not significantly change the scenic or visual quality of the area.

The project includes the replacement of the existing wooden trestle supporting the main line railroad track with a precast concrete bridge and the construction of a similar bridge to support the passing track. The design of the proposed bridges is consistent with other NCTD and Amtrak railroad bridge replacement projects previously reviewed by the Commission at locations in San Diego County. In addition, South Pacific Street crosses Loma Alta Creek on a concrete highway bridge just downstream of the project site at the shoreline. While the new railroad bridges and embankments will be visible from Buccaneer Park, located immediately south of Loma Alta Creek between the railroad tracks and South Pacific Highway, the bridges and embankments are located on the inland side of the park and will not intrude into public views towards the shoreline from the park. The Commission agrees that the proposed passing track extension and replacement mainline bridge will not adversely affect public views to or along the ocean or scenic coastal areas. The Commission therefore finds that the proposed project is consistent with the public view policy of the CCMP (Coastal Act Section 30251).

F. Cultural Resources. Section 30244 of the Coastal Act provides that "Where development would adversely impact archaeological or paleontological resources as identified by the State

Historic Preservation Officer, reasonable mitigation measures shall be required.” The project *Environmental Report* states that:

The staff at the South Coastal Information Center in San Diego, California conducted a record search of the project area on January 21, 2003. The record search encompassed the proposed project area and a ¼ mile radius around the proposed project area. The results of the record search indicated that there is an archaeological resource (CA-SDI-13212) with two components (one historic and one prehistoric) within the proposed project area and one prehistoric resource (CA-SDI-14059) within ¼ mile of the proposed project area.

The historic component of Site CA-SDI-13212 is located within the project area on the eastern side of the main line and is comprised of historic debris (e.g., bottle glass, ceramic fragments, metal objects, brick fragments) dating back to the 1920s. A field survey conducted in March 2003 by the NCTD archaeologist documented no previously undiscovered cultural resources in the project area. The *Environmental Report* concludes that:

Although no cultural resources were observed during the survey of the parcel, there is always a possibility that such resources may become visible once vegetation is removed or during construction excavation . . . Should any previously undiscovered historic or prehistoric resources be found during construction, work should stop until such time that the resource can be evaluated by a qualified archaeologist and appropriate mitigative action taken as determined necessary by a qualified archaeologist.

The Commission finds that the proposed passing track extension will not adversely affect cultural resources known to exist in the project area, and that work will stop and mitigation measures implemented should any cultural resources be discovered during project construction. Therefore, the Commission determines that the proposed project is consistent with the cultural resource policy of the CCMP (Coastal Act Section 30244).

G. Conflict Between Coastal Act Policies. Section 30007.5 of the Coastal Act provides the Commission with the ability to resolve conflicts between Coastal Act policies:

The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner that on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

1) Conflict. In order for the Commission to consider balancing Coastal Act policies, it must first establish that there is a conflict between these policies. The fact that a project is consistent with one policy of the Coastal Act and inconsistent with another policy does not necessarily result in a conflict. Rather, the Commission must find that to object to the project based on the policy inconsistency would result in coastal zone effects that are inconsistent with the Coastal Act.

As discussed previously in Section III.A, above, because the project would increase railway capacity, it does not qualify as an incidental public service under Section 30233(a)(5), Commission interpretations of which historically only allow transportation projects in wetlands where they are necessary to maintain *existing* capacity. Therefore, because the project is not an allowable use, the only way the Commission could find the project consistent with the Coastal Act would be through the “conflict resolution” provision (Section 30007.5).

As described in the access section above (Section III.C), one of the project purposes/benefits is reduced traffic congestion on area highways. NCTD has provided evidence in previous consistency certifications that double-tracking projects provide significant public access and recreation benefits, both through reducing traffic congestion along and improving public access to the coast. NCTD has reiterated that finding in its subject consistency certification. The Commission finds that traffic congestion interferes with access to the coastal recreational opportunities within northern San Diego County (including travelers from Los Angeles and Orange Counties). As traffic congestion increases with expected growth of the region, these access impacts will worsen, and when congestion increases, non-essential trips such as those for recreational purposes tend to be among the first to be curtailed. Thus, as the traffic increases, the ability for the public to get to the coast will become more difficult, which would result in a condition that would be inconsistent with the access policies of the Coastal Act.

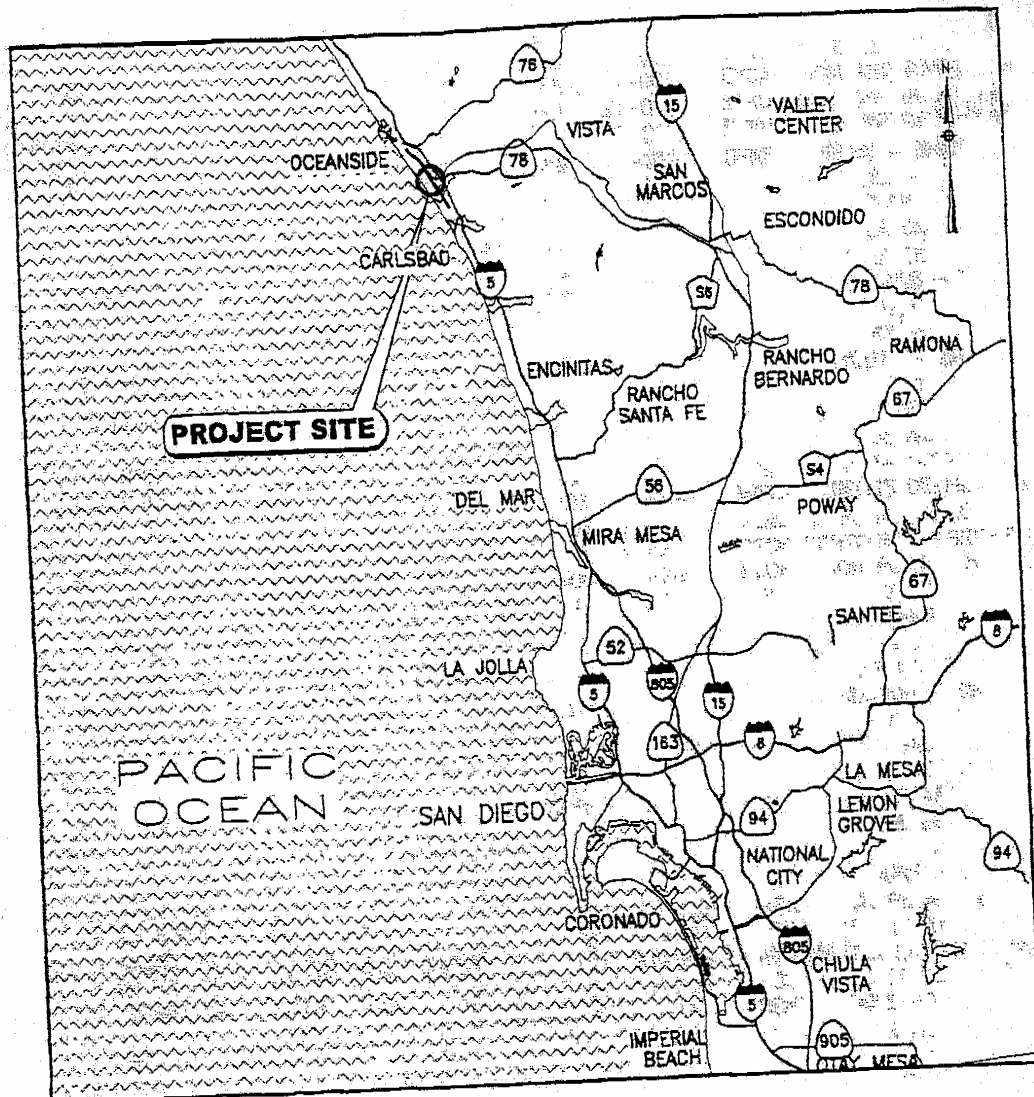
As discussed in Sections III.B and III.D above, traffic increases that would occur if this project is objected to would also degrade water quality. This would result in conditions that are inconsistent with the water and air quality policies of the Coastal Act, because they would adversely affect already impaired coastal water bodies and exacerbate non-attainment status of the coastal air basin. Section 30231 of the Coastal Act requires the maintenance and restoration of coastal water quality. Section 30253(4) provides for improved air quality and reductions in energy consumption and vehicle miles traveled. Section 30252 articulates that one of the Coastal Act’s access goals is encouraging maintenance and enhancement of public access through facilitating the provision or extension of transit service. Thus, not only would objecting to this consistency certification be inconsistent with the access policies, but it would also result in adverse effects to coastal waters and the air basin, and be inconsistent with the achievement of water quality, air quality, energy conservation, and reductions in vehicle miles traveled goals expressed in Sections 30231, 30253(4), and 30252. The Commission therefore finds that the proposed project creates a conflict between allowable use test of the wetland policies (Section 30233(a)) on the one hand, and the water quality/air quality/energy conservation/reductions in vehicle miles traveled/public access and transit policies (Sections 30231/30253(4)/30252) on the other.

2) Conflict Resolution. Having established a conflict among Coastal Act policies, Section 30007.5 requires the Commission to resolve the conflict in manner that is on balance most protective of coastal resources. In this case, the proposed project will result in the fill of 0.1 acres of wetlands. The affected habitat is adjacent to the existing rail line, and adequate on-site mitigation is being provided by NCTD to compensate for the wetland loss. On the other hand, as stated above, objecting to this consistency certification would result in conditions that would be inconsistent with the access policies (Section 30210), and would result in adverse effects to

coastal waters and the coastal air basin, and would be inconsistent with the achievement of water quality, air quality, energy conservation, and reductions in vehicle miles traveled goals expressed in Sections 30231, 30253(4), and 30252. In resolving the Coastal Act conflict raised, the Commission finds that the impacts on coastal resources from not constructing the project would be more significant and adverse than the project's wetland habitat impacts, which would, as conditioned, be adequately mitigated. The Commission therefore concludes that concurring with this consistency certification would, on balance, be most protective of coastal resources.

SUBSTANTIVE FILE DOCUMENTS:

1. CC-072-05, NCTD, after-the-fact consistency certification, emergency repairs, Bridge 208.6, San Onofre Creek, Marine Corps Base Camp Pendleton.
2. CC-055-05, NCTD, Bridge replacement (single-track), Agua Hedionda Lagoon, Carlsbad.
3. CC-052-05, NCTD, Replacement of Santa Margarita River Railroad Bridge, Marine Corps Base Camp Pendleton.
4. CC-004-05, NCTD, O'Neil to Flores Second Track, Marine Corps Base Camp Pendleton.
5. CC-086-03, NCTD, Second Track San Onofre Area, Camp Pendleton Marine Corps Base.
6. CC-058-02, City of Santa Barbara, Modifications to the Santa Barbara Airport.
7. CC-029-02, NCTD, Oceanside-Escondido Rail Project.
8. Programmatic Biological Opinion for the Rail Corridor from the Orange County Border South to Southern Oceanside for Operations and Maintenance, and Six Double-Track Projects in San Diego County, California (1-6-05-P-4123.3)
9. NCTD Coastal Development Permits, 6-01-108 (NCTD - Tecolote Creek), 6-01-64 (NCTD - Balboa Avenue), 6-94-207 (NCTD - Solana Beach), 6-93-106 (NCTD - Carlsbad), and 6-93-105 (NCTD - Camp Pendleton), 6-93-60 (NCTD - Del Mar).
10. "Waiting at the Station," *Planning*, Vol. 73, No. 5, pp. 12-17, May 2007.



PURPOSE:
The project will help to resolve current operational delays and enhance the capacity and utility of the Los Angeles-San Diego (LOSSAN) Corridor.

DATUM: NAD 83

ADJACENT PROPERTY OWNERS:
See List Included with Section 404 Application - Appendix F

Vicinity Map

Oceanside Double Track Project

IN: Oceanside

AT: Between MP 227.2 (CP Escondido Junction) and MP 228.4 (CP Lagoon) just north of Oceanside Blvd.

COUNTY OF: San Diego

STATE: California

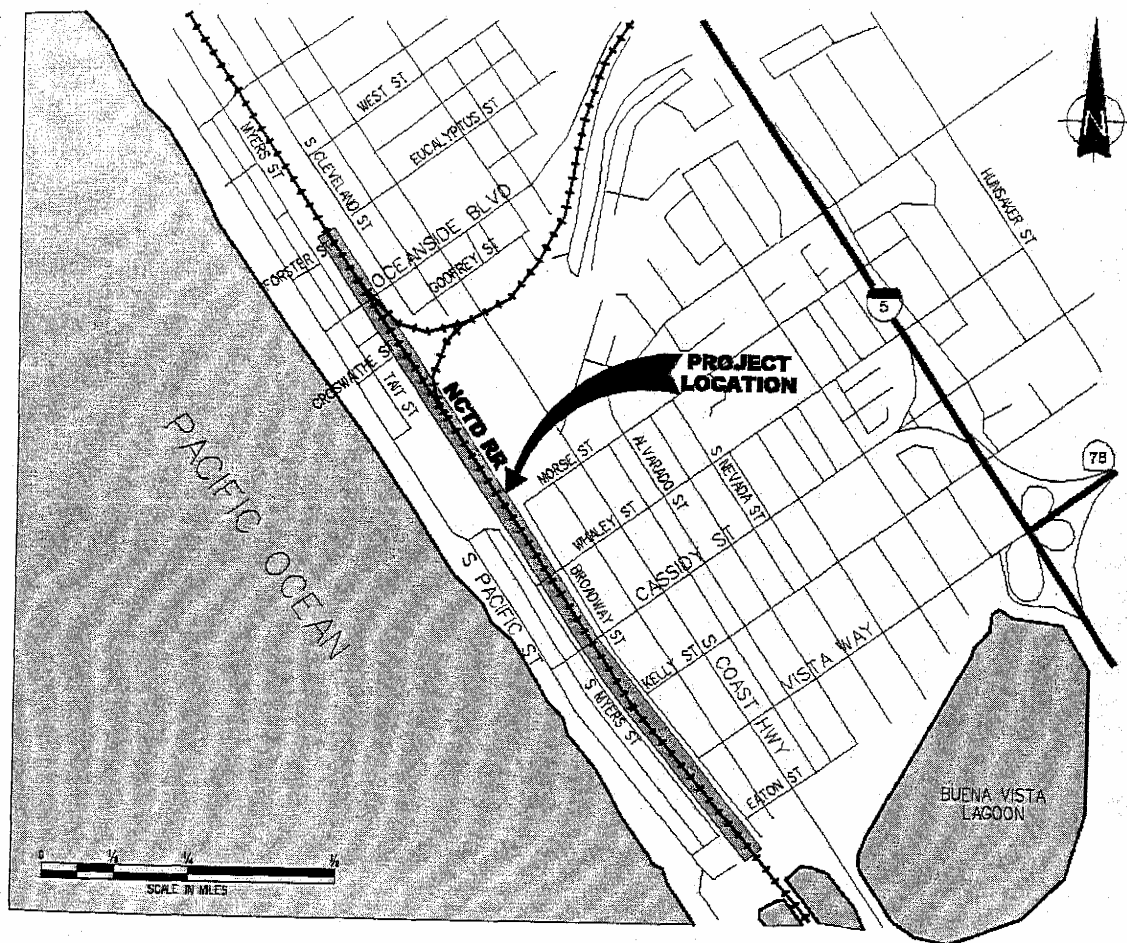
APPLICATION BY: North County Transit District

Figure 2-1. Vicinity Map for the Oceanside Passing Track Extension Project Site, San Diego County, California.

EXHIBIT NO. 1

APPLICATION NO.

CC-008-07

**PURPOSE:**

The project will help to resolve current operational delays and enhance the capacity and utility of the Los Angeles-San Diego (LOSSAN) Corridor.

DATUM: NAD 83

ADJACENT PROPERTY OWNERS:

See List Included with Section 404 Application - Appendix F

Location Map**Oceanside Double Track Project**

IN: Oceanside

AT: Between MP 227.2 (CP Escondido Junction) and MP 228.4 (CP Lagoon) just north of Oceanside Blvd.

COUNTY OF: San Diego

STATE: California

APPLICATION BY: North County Transit District

Figure 2-2. Location Map for the Oceanside Passing Track Extension Project California.

EXHIBIT NO. 2

APPLICATION NO.

CC-008-07

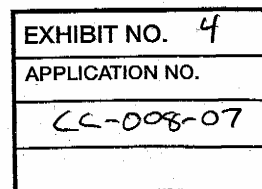


Figure 1 – Aerial view of Loma Alta Creek



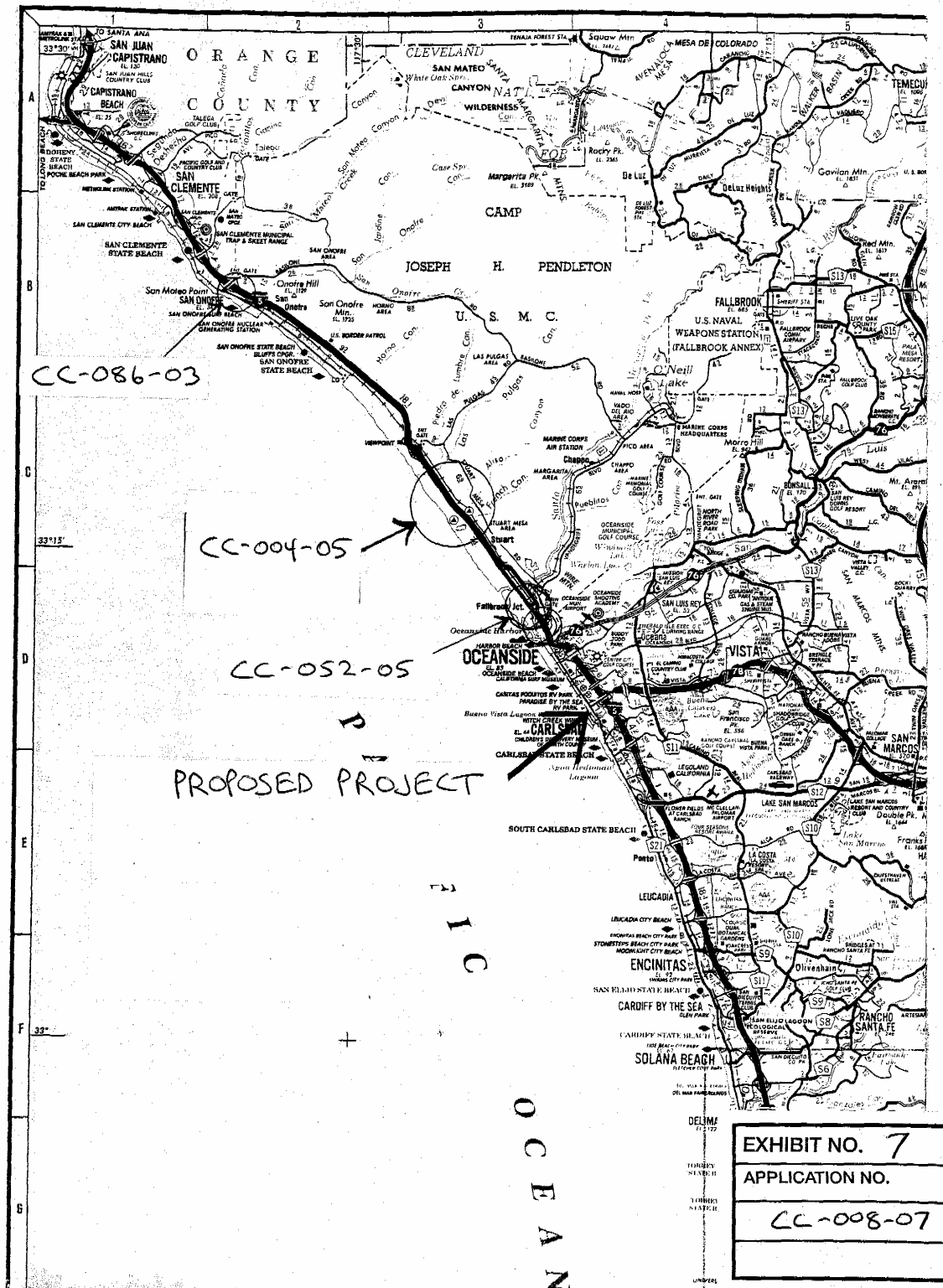
Figure 2 – Close-up of Bridge

EXHIBIT NO. 3
APPLICATION NO.
CD-008-07









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Within the ROW, rehabilitation/restoration will involve the removal of temporary fencing, erosion controls and debris, decompaction, as well as the implementation of a restoration plan. This plan would include planting and/or seeding, and monitoring of the appropriate native species in temporarily impacted areas.

The overall construction timeframe is estimated to be approximately two years. Common earthmoving machinery and vehicles will be used for construction, including: Bull Dozers, Backhoes, Graders, Dump Trucks, Flatbed Trucks, Cranes, Pickup Trucks, and/or SUVs.

Conservation Measures

The conservation measures listed in this section are proposed by FRA, SANDAG and NCTD to avoid and minimize adverse effects to listed species and to compensate for unavoidable adverse effects. Appendix 1 identifies the routine maintenance activities that would not affect listed species.

General Conservation Measures

- GEN1 All vegetation within the project footprint will be cleared between September 15 and February 14 to avoid and minimize impacts to migratory birds and raptors. If clearing activities must occur during the migratory bird and raptor breeding season, then pre-construction surveys will be conducted to ensure that no breeding migratory birds or raptors are present within or immediately adjacent to the proposed clearing area. Should a breeding migratory bird or raptor or nest be located, then clearing will be postponed until 2 weeks after the young have fledged or the biologist determines that the nest has failed.
- GEN2 SANDAG or NCTD will designate a Service approved biologist (project biologist) who will be responsible for overseeing compliance with protective measures for the biological resources during clearing and work activities within areas of native habitat and adjacent to areas known to be occupied by sensitive habitats and species. The project biologist will be familiar with the habitats, plants, and wildlife on Camp Pendleton, and maintain communications with the Resident Engineer (RE), to ensure that issues relating to biological resources are appropriately and lawfully managed. The project biologist will review final plans, designate areas that need temporary fencing, and monitor construction. The project biologist will be made available to review grading plans, address protection of sensitive biological resources, and monitor ongoing activities. The biologist will monitor activities within designated areas during critical times such as vegetation removal, the installation of Best Management Practices (BMPs) and fencing to protect native species, and ensure that all avoidance and minimization measures are properly constructed and followed. The project biologist will immediately notify the RE to halt all associated activities that may be in violation of this biological opinion. In such an event, the RE will halt all

EXHIBIT NO. 8
APPLICATION NO. CC-008-07

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such activities and contact the Service within 24 hours. The project biologist will submit weekly reports to the Service during initial grading and clearing, and when in the opinion of the biologist, work occurs near sensitive biological resources. The project biologist will provide a final report documenting compliance with avoidance and minimization measures within 60 days of the completion of work. For projects lasting more than one year, an annual report will be submitted.

- GEN3 An employee education program will be developed. Each employee (including temporary contractors and subcontractors) will receive a training/awareness program prior to conducting physical activities related to the work addressed by this biological opinion. The program will advise workers of potential impacts to the sensitive habitats and species and the potential penalties for impacts to such habitat and species. At a minimum, the program will include the following topics: occurrence of the listed and sensitive species in the area, a physical description and their general ecology, sensitivity of the species to human activities, legal protection afforded these species, penalties for violations of Federal and State laws, reporting requirements, and work features designed to reduce the impacts to these species; and to the extent practicable, promote continued successful occupation of areas adjacent to the work footprint. Included in this program will be color photos of the listed species, which will be shown to the employees. Following the education program, the photos will be posted in the contractor and resident engineer's office, where they will remain through the duration of the work. The proponent of the work and the project biologist will be responsible for ensuring that employees are aware of the listed species. Photos of the habitat in which sensitive species are found will be posted on-site.
- GEN4 The changing of oil, refueling, and other actions that could result in a release of a hazardous substance will be restricted to designated areas that are sited as far as is practicable from any sensitive plant populations, sensitive habitats, or drainages. Such designated areas will be surrounded with berms, sandbags, or other barriers to further prevent accidental spill of fuel, oil, or chemicals. Any accidental spills will be immediately contained, cleaned up, and properly disposed.
- GEN5 During the migratory bird and raptor breeding season, storage and staging areas will be placed as far from sensitive areas as practicable. To the maximum extent practicable, staging areas will be located within previously disturbed sites and no closer than 100 feet from sensitive habitat. Prior written approval from the Service is required for staging within native habitat areas or within 100 feet during the migratory bird and raptor breeding season.
- GEN6 Impacts from fugitive dust will be offset through implementation of Caltrans Standard Specifications, including Section 7-1.01F Air Pollution Control, Section 10 Dust Control, Section 17 Watering, and Section 18 Dust Palliative. The project biologist will periodically monitor the work area to ensure that work activities do not generate

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excessive amounts of dust or cause other disturbances. Erosion control measures will be regularly checked by the RE or the RE's appointed representative.

GEN7 To avoid attracting predators of migratory birds, the work site will be kept as clean of debris as possible. All food related trash items will be placed in sealed containers and regularly removed from the site.

GEN8 Pets of personnel will not be allowed on the work site.

GEN9 Night lighting in the vicinity of native habitat areas will not occur to the maximum extent practicable. Any night lighting will be selectively placed, shielded, and directed away from all areas of native habitat to the maximum extent practicable.

GEN10 Environmentally Sensitive Areas (ESAs) include areas of native vegetation and habitat for listed species. ESAs along the edge of the project footprint will be delineated by the proponent. All parties associated with the work will strictly avoid these areas. No work activities, materials, or equipment storage or access will be permitted in an ESA. The boundaries of the ESA will be fenced with orange plastic snow fencing. Work areas will be marked clearly in the field and confirmed by the project biologist prior to habitat clearing, and the marked boundaries will be maintained throughout the duration of the work.

Conservation Measures for Temporary Vegetation Impacts

TVG1 Native vegetation in the temporary impact footprint shall be trimmed at the surface rather than uprooted to the maximum extent practicable.

TVG2 All generally native areas, as opposed to generally developed areas, temporarily impacted by work activities will be re-vegetated with native plant species using a standardized restoration plan submitted to the Service at least 90 days prior to planting. The restoration plan will describe revegetating all temporarily disturbed areas within the scope of this Opinion. All native seed and plant stock will be from seed and propagules collected within a five-mile radius of the work area to the extent practicable. Seed sources outside of the five-mile radius will be approved by the Service to determine whether the source is acceptable. All seeding will occur during the first winter or fall following completion of the work.

TVG3 No invasive exotic plant species will be seeded or planted adjacent to or near sensitive vegetation communities or waters of the U.S. In compliance with Executive Order 13112, impacted areas will be reseeded with plant species native to local habitat types, and will avoid the use of species listed in Lists A & B of the California Exotic Pest Plant Council's (Cal-EPPC) List of Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999 to the greatest extent practicable.

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Areas hydroseeded for temporary erosion control measures will use native plant species.

- TVG4 Temporary Impact areas will be restored in kind, except temporary impacts to disturbed habitat and non-native grassland in generally native areas will be revegetated with the most appropriate native plant palette following completion of the work. Any areas of disturbed habitat or non-native grassland revegetated with a native palette will not be counted as native habitat for any future transportation-related activity.

Conservation Measures for Permanent Vegetation Impacts

Because the public purpose of the NCTD ROW is a transportation corridor, it is recognized that NCTD cannot commit the ROW to long-term habitat preservation. Permanent impacts to vegetation associated with work within the ROW will be offset in an area outside of the ROW (off-site conservation area).

- PVG1. The following measures apply to the off-site conservation area.
- a. Coastal sage scrub, southern coastal bluff scrub, maritime succulent scrub, and native grass communities will be offset at a 2:1 ratio with any combination of off-site preservation, creation, or restoration of like habitat;
 - b. Non-native annual grasslands will be offset at a 0.5:1 ratio with any combination of off-site preservation, creation, or restoration of native habitat;
 - c. Riparian areas will be offset at a 3:1 ratio with any combination of off-site preservation, creation, or restoration of native habitat; and
 - d. All Federal waters will be offset following the requirements of the Regional Water Quality Control Board and the U.S. Army Corps of Engineers.
- PVG2. A project-specific plan, outlining the details and implementation schedule of all enhancement, restoration, and creation to offset permanent impacts to vegetation will be prepared by the proponent and submitted to the Service for review and approval at least 90 days prior to the start of each of the three specific projects addressed by the biological opinion. All enhancement, restoration, and creation activities to offset permanent vegetation impacts will commence the first fall/winter season prior to or concurrently with the start of the work. The plan should also include:
- a. A 5-year maintenance and monitoring program that will be implemented for the created, enhanced and/or restored habitats.

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- b. If a performance criterion is not met, the proponent will prepare an analysis of the cause(s) of failure and, if deemed necessary by the Service, propose remedial actions. If any of the enhanced/restored/created habitats have not met a performance criterion during the initial 5-year period, the work proponent's maintenance and monitoring obligations will continue until the Service deems the enhancement/restoration successful, or contingency measures will be implemented.
- c. Annual reports will be submitted to the Service by August 1 of each year. These reports will assess both the attainment of yearly success criteria and progress toward the final success criteria. The reports will also summarize compliance with the conservation measures, reasonable and prudent measures, and terms and conditions of this Opinion.

PVG3 The following measures will be implemented at all off-site enhancement, restoration, and creation sites to avoid and minimize effects to migratory birds during the five-year restoration period:

- a. When maintenance and monitoring activities are conducted during the general migratory bird breeding season of February 15th to September 15th of each year, a qualified biologist will conduct a habitat assessment of the possibility for nesting birds no more than one week prior to the start of proposed activities.
- b. If nesting birds are observed on-site, no maintenance activities will be conducted within 100 feet of a nest (exclusion zone), except to repair broken irrigation lines. If an irrigation line is broken and workers need to encroach into the 100-foot exclusion zone, then the project proponent and the Service will be notified immediately. Prior to maintenance workers accessing the 100-foot exclusion zone, the project proponent and the Service will determine the most appropriate timing and method of repair without causing harm to the nest and/or the nesting pair.
- c. Herbicide application will occur outside of the 100-foot exclusion zone to avoid drift towards the nest. Only hand spraying downwind of the nest will be allowed. Herbicides will be applied strictly according to label instructions.
- d. An education program will be implemented by the project proponent to ensure that all enhancement, restoration, and creation site maintenance workers understand the work restrictions during the general bird breeding season and are aware of the above described conservation measures.

PVG4 The work proponent will establish an appropriate financial mechanism (determined using a program such as the Property Analysis Report (PAR) system) to fully implement all appropriate conservation measures.

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PVG5 The work proponent will ensure that long-term management of the conservation sites will occur. Within three months of the acquisition of the conservation parcels or easement, a draft management plan will be developed in coordination with the Service. The plan should be finalized within six months and implemented immediately following final sign off of all restoration activities for each parcel. If the conservation sites are transferred to a third party for long-term management, then an endowment with sufficient funds (determined using the PAR system or a PAR-like system) will be established subject to availability of funds, unless otherwise negotiated with the receiving party.

PVG6 All habitats to be restored, enhanced, created and/or preserved outside of the ROW, as stated above, will be managed and preserved in perpetuity. The work proponent will ensure there is a perpetual biological conservation easement over all properties used to offset impacts addressed in this Opinion and these lands will be managed according to a Service approved Long-Term Management Plan. The perpetual conservation easement and Long-Term Management Plan will be submitted to the Service prior to the start of the work.

Coastal California Gnatcatcher Conservation Measures

CGN1 Work in vegetation communities that support the gnatcatcher will be timed to avoid the breeding season (February 15 to September 1) to the extent practicable, unless the project proponent documents that the habitat to be affected is not occupied by the gnatcatcher. Occupancy surveys will be conducted during the breeding season to determine and document the presence/absence of breeding gnatcatchers.

Immediately prior to clearing vegetation outside of the gnatcatcher breeding season, the biologist will survey the work area for gnatcatchers. If gnatcatchers are found within the work footprint, the biologist will direct workers to begin initial vegetation clearing/grubbing in an area away from gnatcatchers. In addition, the biologist will walk ahead of clearing/grubbing equipment to flush birds toward areas of appropriate vegetation that are to be avoided. It will be the responsibility of the biologist to ensure that gnatcatchers will not be injured or killed by initial vegetation clearing/grubbing. The biologist will record the number and map the location of gnatcatchers disturbed by initial vegetation clearing/grubbing or construction and report these numbers and locations to the Service with 24 hours.

CGN2 For construction activities adjacent to occupied gnatcatcher habitat in which noise in excess of 60 dB(A) L_{eq} is produced or noise in excess of ambient noise levels if ambient noise levels exceed 60 dB(A) L_{eq} ; noise attenuation structures will be placed prior to the beginning of breeding season to reduce noise levels to 60 dB(A) L_{eq} or to ambient noise levels if ambient noise levels exceed 60 dB(A) L_{eq} , except as necessary for emergency activities. During construction adjacent to these areas, noise

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